

REMARKS

Claims 1-9, 11, 13-27, 30-33, and 35-46 are pending. Claims 1-5, 9-27, 37, and 46 are rejected under 35 U.S.C. § 102(b) as being anticipated by Weddle et al. (U.S. Pat. No. 5,359,595). Claims 6-8 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Weddle et al. Claims 28, 35-36, 38, and 40-41 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Weddle et al. in view of Mahany (US 2004/0077353). Claims 29-34 and 43-45 are objected to as being dependent upon a rejected base claim. Claims 1, 6-7, 11, 13-14, 18, 24-27, 30-32, 35, 37, 40, and 46 are currently amended. Claims 10, 12, 28-29, and 34 are cancelled without prejudice.

Examiner has objected to claims 29-43 and 43-45 as being dependent upon a rejected base claim and stated they would be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims. Claim 29 depends from claim 28 which depends from independent claim 27. Claim 27 is rewritten to include all the limitations from claims 28-29. Furthermore, the limitations of claims 28-29 are added to independent claims 14, 18, and 19. Claims 28-29 and 34 are cancelled without prejudice. Thus, applicants believe claims 14-27 and 30-33 are patentable under 35 U.S.C. § 102(b) over Weddle et al.

Independent claims 1 and 37 are rejected under 35 U.S.C. § 102(b) as being anticipated by Weddle et al. Claim 1 is amended to recite "A method of selecting a frequency band for use in a wireless packet communication transceiver, comprising: *receiving in a first mode having a first data rate a plurality of probe packets* respectively on a plurality of probe frequencies within an available frequency bandwidth; obtaining therefrom information indicative of frequency channel quality associated with the plurality of frequencies; using the frequency channel quality information to produce information indicative of frequency band quality associated with a plurality of frequency bands within the available frequency bandwidth; and based on the frequency band quality information, *selecting one of the frequency bands for use in wireless packet communications in a second mode having a second data rate different from the first data rate.*" Claim 37 is amended to recite "A wireless communication apparatus, comprising: *an input for receiving information indicative of fading parameters respectively associated with a plurality*

TI-31285, Page 12

of frequency channels within an available frequency bandwidth in a first mode having a first data rate, said available frequency bandwidth including a plurality of frequency bands which each include a plurality of said frequency channels; a band quality determiner coupled to said input and operable with respect to each of said frequency bands for using the fading parameter information associated with the frequency channels of said frequency band to produce band quality information indicative of frequency channel communication quality within said frequency band; and a selector coupled to said band quality determiner for selecting, based on the band quality information, one of the frequency bands for use in wireless communications in a second mode having a second data rate different from the first data rate.” (emphasis added).

Applicants fail to find any disclosure by Weddle et al. of “receiving in a first mode having a first data rate a plurality of probe packets” and “selecting one of the frequency bands for use in wireless packet communications in a second mode having a second data rate different from the first data rate” as required by independent claim 1. Furthermore, applicants fail to find any disclosure by Weddle et al. of “receiving information indicative of fading parameters respectively associated with a plurality of frequency channels within an available frequency bandwidth in a first mode having a first data rate” and “selecting, based on the band quality information, one of the frequency bands for use in wireless communications in a second mode having a second data rate different from the first data rate” as required by independent claim 37. For example, Weddle et al. appear to use the same data rate at 54, 56, and 58 of Figure 3. Thus, applicants respectfully submit that claims 1-5, 9, 11, 13, 37, and 46, as amended, are patentable under 35 U.S.C. § 102(b) over Weddle et al.

Applicants acknowledge the rejection of depending claims 6-8, 35-36, 38, and 40-41 under 35 U.S.C. § 103(a) but believe these rejections are moot in view of the foregoing amendment and discussion. Applicants fail to find any basis for rejecting claims 39 and 42 and, therefore, request clarification or allowance of claims 39 and 42.

In view of the foregoing, applicants respectfully request reconsideration and allowance of claims 1-9, 11, 13-27, 30-33, and 35-46. If the Examiner finds any issue that is unresolved, please call applicants' attorney by dialing the telephone number printed below.

Respectfully submitted,



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